310, seem to cover the important question involved in this case, and the case of *Show* vs. *Spooner*, 9 New H. R. 196, is almost identical with the present, and all these cases stand, as we think, upon ground that is altogether unassailable.

I question, very seriously, whether in this State, a private person has any right to use any public or private prosecution for crime of any grade, for the purpose of inducing a settlement, security or payment of a private claim, for private loss or injury. At all events it must be considered as well settled everywhere, that no such use can be made of a prosecution for a crime of the character here indicated.

The fact, that this note was given for the agreed price of the goods, is certainly not decisive. The party without the use made of the public prosecution, might not have been able to obtain security for that amount, or any part of it. If so, he should not have resorted to this abuse of a public prosecution. It is not duress, but illegality which makes this contract ineffectual. This, of course, may be taken advantage of by all parties in defence.

Judgment affirmed.

In the Supreme Court of Pennsylvania.

THE STATE OF OHIO EX REL. WALTER HINCHMAN, (A MINOR) BY HIS NEXT FRIEND, DAVID H. TAYLOR *vs.* MORGAN HINCHMAN.

1. The record of a judgment obtained in a Probate Court of Ohio in a proceeding upon habeas corpus, is within the provisions of the Act of Congress of 26th May, 1790, providing for the authentication of records from sister States.

2. In an action brought in this State upon a judgment, certified under said act as a decision of the Supreme Court of the United States, the courts of this State are bound to take notice of the local laws of the sister State, in the same manner as that court would do on a writ of error to the Supreme Court of this State.

3. The act of Congress does not forbid the union of the offices of judge and clerk in the same person; and it is no objection, therefore, to the attestation and certificate of a record from a sister State, that they are both given by the same person, where the laws of that State provide for such union.

4. The act of Congress does not preclude any other evidence of the authenticity of a record of a sister State, which the courts of another State may deem competent.

5. Where the record itself shows that the person giving the certificate must necessarily have been "the judge, chief justice, or presiding magistrate" of the court, it is not material or requisite to the validity of the authentication of a record, under the act of Congress, that the language of the certificate itself should exclude every other supposition.

Debt on a judgment of a Probate Court of Ohio, for costs accrued in proceeding by habeas corpus. A writ of habeas corpus, in the name of the State of Ohio, at the suggestion of Walter Hinchman, (a minor) by his next friend, was issued out of the Probate Court of Hamilton County, Ohio, directed to the sheriff, commanding him to have the body of said Walter before said court forthwith, and to summon Morgan Hinchman, to appear and show cause why he, as it was said, imprisoned and restrained of his liberty, the said Walter. The sheriff produced the body of the said Walter in court, and summoned the said Morgan, who appeared and filed his answer to the petition on which the habeas corpus was grounded. The matter was regularly proceeded in, and a final decree rendered, by which it was adjudged that the said Morgan deliver up and set free the said Walter from all restraint and custody, and pay the costs of the proceeding, taxed at $438 83. The present action was debt upon said judgment to recover the amount of said costs. The pleas were, nul tiel record, payment, and set off, with leave, &c.

Upon the trial, the plaintiff offered in evidence a certified copy of the record of the proceedings upon the habeas corpus; to which the defendant objected as not being such a record as is within the Act of Congress, and as not being authenticated according to the provisions of said act. The authentication was as follows:

The State of Ohio, Hamilton County, ss.

I, John B. Warren, Judge, and ex-officio Clerk of the Probate Court within and for the County of Hamilton, and State of Ohio, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings of said Probate Court, in the case of the State of Ohio ex rel. *Walter Hinchman* vs. *Morgan Hinchman*,

on a writ of habeas corpus, as the same remains of record and on file in said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Court, at Cincinnati, this ninth day of January, in the year of our Lord one thousand eight hundred and fifty-five.

J. B. WARREN, *Probate Judge and ex-officio Clerk.*

The State of Ohio, Hamilton County, ss.

I, John B. Warren, Judge of the Probate Court, within and for the county of Hamilton and State of Ohio, do hereby certify that J. B. Warren, whose signature is attached to the foregoing certificate, is now, and was at the time of signing the same, ex-officio clerk of the said Probate Court, and that his attestation is in due form of law, and is entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Cincinnati, this ninth day of January, in the year of our Lord one thousand eight hundred and fifty-five.

J. B. WARREN, *Probate Judge.*

The record itself stated that the proceedings were had before "J. B. Warren, sole judge," &c. The court overruled the objections, and admitted the evidence, reserving the points; to which the defendant excepted. The jury found a verdict for plaintiff for $463 04, subject to the opinion of the court on the points reserved. The court afterwards entered judgment for the plaintiff on the points reserved, and on the plea of nul tiel record, whereupon the defendant took this writ of error.

S. C. Perkins and *S. H. Perkins*, for plaintiff in error.

1. A record of proceedings upon a habeas corpus issued out of a Probate Court of the State of Ohio, is not such a record as is within the act of Congress of 26th May, 1790. The record of any judgment of any court of a sister State would be treated in all respects as a foreign judgment, were it not for Art. IV., Sec. 1, of the Constitution of the United States, and the act of Congress. This act

makes certain provisions for the authentication of records and judicial proceedings; but does not provide for all cases. *Warren* vs. *Flagg*, 2 Pick. 448. It must appear that the court whose alleged record is offered in evidence was such a court as necessarily keeps a record. Jurisdiction will be presumed in regard to courts whose names are derived from the common law, and where the record itself bears every evidence of being of a court of record. But the very name "*Probate* Court," implies a court of limited jurisdiction. The proceedings of probate courts are not according to the common law; it cannot be presumed that they have any jurisdiction of a matter of habeas corpus, which is emphatically a common law writ.

Proceedings upon a habeas corpus, are not such proceedings of which a record is bound to be made, or presumed to be kept. It must be shown affirmatively, that the probate judge is authorized and bound to keep a record of proceedings under a habeas corpus.

A decision of one judge or court upon a matter of habeas corpus, is not binding upon any other judge or court. *Comm'th* vs. *Biddle*, 6 P. L. J., 287, *Comm'th* vs. *Fox*, 1 id. 227; S. C. 7 Barr, 336. Such a proceeding is not regarded as possessing even the ordinary attribute of a judgment, that it cannot be inquired into collaterally; but it is treated with still less respect, as if it never had an existence. A proceeding upon a habeas corpus is not ordinarily the subject of revision by a superior court; no writ of error or appeal lies, unless by special and express provision.

The very fact that the Probate Court had no clerk, distinct from the judge, shows the inferior character of the court. *Duval* vs. *Ellis*, 13 Missouri, 203.

The cases in which it has been expressly decided, or strongly intimated, that records of proceedings before Justices of the Peace are not within the Act of Congress, are analogous. And the reasoning of many of these cases proceeds on the very ground of the absurdity of the same man certifying as clerk, and then, under another title, certifying that what he has done as clerk, is correct. *Kean* vs. *Rice*, 12 S. & R. 208, *Snyder* vs. *Wise*, 10 Barr, 160; *Robinson* vs. *Prescott*, 4 New Hampshire, 450; *Mahurin* vs. *Bick*

ford, 6 id. 570; *Gay* vs. *Lloyd*, 1 Green, (Iowa,) 78; *Silver Lake Bank* vs. *Harding*, 5 Ohio, 546.

The act of Congress is carefully drawn; but one amendment, (1804,) having been found necessary in the course of nearly seventy years. It is reasonable to infer, where one exceptional case has been provided for by the words "if there be a seal," that had there been any intention to provide for the contingency of the clerk and judge being the same person, equally express words would have been inserted.

The jurisdiction of a court of inferior jurisdiction should have been shown affirmatively, before the record was admitted. If it had no jurisdiction, the record of the proceedings was no record as to the defendant. *Thomas* vs. *Robinson*, 3 Wendell, 267; *Bloom* vs. *Burdick*, 2 Hill N. Y. Rep., 130. But the alleged record was offered upon its own inherent merits simply.

The Constitution and act of Congress do not prevent inquiry into the jurisdiction of a court of a sister State, *Starbuck* vs. *Murray*, 5 Wendell, 158; *Noyes* vs. *Butler*, 6 Barbour S. C. Rep., 613; *Street* vs. *Smith*, 7 W. & S. 447.

2. But the authentication of the record is defective. The certificate does not show that the certifying officer is "*the* judge, chief justice, or presiding officer," *Lothrop* vs. *Blake*, 3 Barr, 487; *Hudson* vs. *Daily*, 13 Alabama, 722; *Stephenson* vs. *Bannister*, 3 Bibb, 369. The fact that the certificate of the clerk and that of the judge are given by the same individual, is a further defect. The Act of Congress manifestly contemplates the clerk as distinct from the judge. Nor can any statute of Ohio which may authorize a probate judge to act as his own clerk, affect the act of Congress. In *Lothrop* vs. *Blake*, supra, where the question arose upon the authentication of a record from Ohio, the attestation of which was by a deputy clerk, Rogers, J, says expressly, nor will the statute of Ohio, which enables deputies to perform the duties of the principal, make the authentication of the record by him evidence; as this would enable the several States to alter and control the Act of Congress. It must be construed by itself independent of legislative enactments. The independent certificate of a distinct individual,

the one best fitted to know the fact, that the attestation is in due form, is provided for. But this provision is practically abrogated, if the same individual by appending to his name distinct titles, can be allowed to discharge both functions. It is no guaranty, no assurance at all in respect to the verity of the record. And see the cases in reference to proceedings before justices of the peace, cited supra.

Charles Gibbons, for defendant in error.

The opinion of the court was delivered by

WOODWARD, J.—This was an action of debt brought to recover a large bill of costs for which judgment had been rendered against the defendant by the Probate Court of Hamilton county, Ohio, in a proceeding by *habeas corpus* before that court. When the plaintiff offered the certified copy of the record in evidence, attested by J. B. Warren, Probate Judge, and ex-officio Clerk, under the seal of the court, and certified by J. B. Warren, as Probate Judge, also under the seal of the court, the defendant objected to it as not being such a record as is within the act of Congress, and not being authenticated agreeably to the same act. The court overruled the objection, and having admitted the record, decided that the proceedings under a writ of habeas corpus would support the present action, and these are the grounds of the errors assigned.

There was no proof offered in reference to the constitution and jurisdiction of the Probate Court of Ohio, but we suppose we are bound, in the circumstances of this case, to take notice *ex officio* of the local laws of Ohio. The questions before us arise under the constitution and laws of the United States. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, says the federal constitution; and the act of Congress of 26th of May, 1790, providing for the mode of authenticating the records and judicial proceedings of the State courts, declares that "the records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or

usage in the courts of the State from whence the said records are or shall be taken."

A judgment of this court adverse to the right arising out of the federal constitution and legislation would be reviewable in the Supreme Court of the United States, and there the States of the confederacy are not regarded as foreign States, whose laws and usages must be proved, but as domestic institutions whose laws are to be noticed without pleading or proof. It would be a very imperfect and discordant administration for the court of original jurisdiction to adopt one rule of decision, while the court of final resort was governed by another, and hence it follows, that in questions of this sort, we should take notice of the local laws of a sister State in the same manner the Supreme Court of the United States would do on a writ of error to our judgment. 7 Cranch, 408; Id. 481; 3 Wheat. 234; *Baxley* vs. *Lynch*, 4 Harris, 243.

Referring ourselves, then, to the laws of Ohio, we find that by the 7th section of the 4th article of her constitution of 1851, a court of probate is established in each county, "which shall be a court of record, open at all times and holden by one judge;" and by the 8th section, jurisdiction in *habeas corpus*, "as may be provided by law," is, among other powers, expressly conferred upon this court.

By an act of assembly defining the jurisdiction and regulating the practice of probate courts, passed the 14th of March, 1853, concurrent jurisdiction with the other courts is conferred upon the probate courts in allowing and issuing writs of habeas corpus, and in determining the validity of the capture and detention of persons brought up on such writs. By section 10 of this act, the judges of said courts have the care and custody of all files, papers, books and records belonging to the probate office, and are authorized and empowered to perform the duties of clerks of their own courts, or to appoint deputies to act as clerks for them.

By section 15, orders for the payment of money may be enforced by execution or otherwise, in the same manner as judgments in the Court of Common Pleas.

By the 11th section of an act relating to habeas corpus, passed 8th February, 1847, the judge before whom the writ is returnable

has power, after hearing, to tax the costs and fees allowed by law to witnesses and officers, and "where the person was in custody by virtue or under color of proceedings in any civil case, such costs shall be taxed against the party at whose instance such person was so in custody, in case he shall be discharged; but against such person so in custody in case he shall be remanded to custody."

From all this it appears, first, that the Probate Court had jurisdiction to render the judgment sued on. The costs accrued in proceedings in a civil case. And this appearing, upon an inquiry which we are bound to institute, it matters not that the Probate Court ranks as an inferior tribunal, and not as one of those superior courts who exercise a common law jurisdiction, and whose acts and judgments are conclusive in themselves—for the strictness with which the proceedings of inferior tribunals are scrutinized, only applies to the question of jurisdiction, and when the existence of that is proved or conceded, the maxim *omnia rite acta* applies to them as well as to courts of general jurisdiction. 1 Smith's Leading Cases, (H. & W.) 817.

The next conclusion which results from the local laws of Ohio, is that the record of the Probate Court was well attested and certified.

The act of Congress requires the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form.

Here we have the attestation, the seal, and the certificate, in due form; but it is said the act of Congress contemplated the record of a court having both a judge and a clerk, whose official acts should be a check on each other. Doubtless. But it does not forbid the union of the two offices in the same person, nor invalidate formal and legal acts because performed by one and the same hand.

The remark of Chief Justice Tilghman, in *Kean* vs. *Rice*, 12 S. & R. 208, that if the New Jersey justices of the peace, whose record he was considering, had no clerk, it would be impossible to comply with the act of Congress, does not apply here, because the Probate Court of Hamilton county *has* a clerk, and that clerk has attested

the record under the seal of the court; and by the laws of Ohio the judge of the court is lawfully the clerk of the court.

In form this is a strict compliance with the act of Congress, and in substance it is an essential compliance. But even if this were not a sufficient compliance with the act of Congress, we would still treat it as an adequate authentication upon general principles, and independently of the act of Congress. That act prescribes a general rule which makes records admissible in every State, but it does not exclude any other evidence which the courts of a particular State may deem competent. *Baker* vs. *Field*, 2 Yeates, 532; *Kean* vs. *Rice*, 12 S. & R. 203.

The only remaining objection that the certificate does not show that it is by *the* judge, chief justice, or presiding magistrate of the court, is answered by the record itself, which describes J. B. Warren as *sole* judge of the court, and by the constitution and laws of Ohio, which show that the Probate Court is to consist of a single judge.

This record of a judgment rendered by a court of competent jurisdiction, and certified in substantial compliance with the act of Congress, is entitled to "full faith and credit"—an expression which the act of Congress defines to be "such faith and credit as it has by law or usage in the courts of the State from whence it comes." In that State it would be ground for an action of debt and evidence to charge the defendant. In the particular forum where the judgment was rendered, it would be ground also of an execution; but we give it, not the remedial effect of the former, but the credit which the *State* gives it in her tribunals. With them it would not be ground of execution, but of an action, and with us it is the same.

The judgment is affirmed.